PRELIMINARY ASSESSMENT OF LAWS AND INSTITUTIONS

FOR PRIVATE REAL ESTATE MARKETS IN ARMENIA

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By

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Abstract

This report provides an assessment of progress to date on the development of laws and institutions that may influence the progress of establishing private real estate markets in Armenia. It includes a description of privatization efforts already undertaken with respect to agricultural lands, housing, urban lands, and retail/commercial space; an analysis and explanation of current housing needs; a review of the status of property interests, allowable uses, limitations on development rights, prohibitions against foreign land ownership, and the forms of concurrent ownership under existing law; and an analysis of allowable methods of property conveyancing and land transfers. Also included is an examination of their systems of land and transfer taxation, title registration, pledge/mortgaging, land-use, land inventory, eminent domain, leasing laws and landlord-tenant relationship. Recommendations for changes and improvements are provided with respect to the areas of law and institutions examined. A prioritized agenda for action is provided to serve as a guideline for continued USAID/ICMA assistance with Armenian shelter sector reform.

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FINAL REPORT OF ROBERT G. JOSEPHS

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I. INTRODUCTION

Since declaring its independence on August 23, 1990, the Republic of Armenia has worked actively to privatize its land and housing supply and establish real estate markets based on, and driven by, market forces. In an effort to help with these initiatives, the U.S. Agency for International Development (USAID) issued a grant to the International City and County Managers Association (ICMA) to assist the Republic of Armenia achieve these objectives.

USAID/ICMA engaged the services of Robert G. Josephs, an attorney from Washington, D.C. specializing in real estate, housing and environmental law, to assess the progress to date on developing laws and institutions for well-functioning real estate markets, and assist the Government of Armenia's Department of the Economy in the preparation of specific laws addressing issues related to housing and land privatization.

The following report contains the results of a preliminary assessment of some of the existing and proposed laws and institutions that may influence the development of private real estate markets in Armenia. It is based primarily on (i) Mr. Josephs' interviews with members of the Armenian Supreme Council (i.e. Parliament), Government, Ministries, judicial system and private citizens and (ii) a review of those laws and decisions he was able to obtain in translation during his visit.

Mr. Josephs collected a comprehensive set of applicable Armenian laws and decisions having an impact on shelter sector activities, most of which are currently in the process of being translated to english. A list is attached to this report as Exhibit A. A legislative working group of Armenian attorneys, formed by Mr. Josephs, has already begun a systematic in-depth analysis of these laws and a comprehensive review of existing institutions with the intent of developing recommendations for improving existing and proposed laws and institutions and thereby enhance private real estate markets in Armenia. The paper also contains recommendations for further work to be undertaken by USAID/ICMA advisers, together with a prioritized agenda for such activities.

II. PRIVATIZATION

A. Agricultural Lands

The Republic has made significant progress towards privatizing its economy in the few years since independence. State enterprises, small business enterprises and agricultural lands were the initial targets of these efforts.

Land privatization began with adoption of a new Land Code[1] in 1991. As of January 1, 1993, approximately 310,500 hectares of land were deeded to citizens of the Republic to create approximately 238,300 peasant farms (average size of about 1.3 hectares) and 99,800 hectares were privatized to create 7,700 collective farms (average size of about 12.9 hectares). Combined, the 410,300 hectares make up approximately 68.6 percent of Armenia's agricultural lands (exclusive of pasture lands). Additionally, local governments leased approximately 230,000 hectares to others for agricultural purposes.[2]

Land parcels were allocated to citizens according to a prioritized list. Generally, those engaged in farming a particular plot were given the highest priority, followed by residents of former villages that had since become urbanized, but were situated close to the subject property. Finally, other citizens living in populated areas not adjacent to the subject lands, but who desired to operate a farm, were entitled to apply for ownership of any remaining parcels.

A nominal price was charged by the Republic to privatize an agricultural parcel in this manner. The amount was based on a land cadastre established by the Armenian Council of Ministers. Lands attached to farmers' homes for personal use were allocated free of charge, and now are part of what are referred to as "peasant farms". As of January 1, 1993, 158.8 million rubles (approximately $132,000 at the June, 1993 average exchange rate of 1,200 rubles per U.S. dollar) had been realized as a result of the land allocation.

Those lands not already privatized will either be retained by the Government and leased for agricultural or other uses, or sold. A moratorium on the re-sale of privatized agricultural lands was imposed for the three years following privatization. It expires in 1994. Procedures pursuant to which such sales will be carried out have not yet been prepared, although regulations are in the process of being developed. (See Article V. A., below).

B. Housing

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[1] Land Code of the Republic of Armenia, Resolution of the Supreme Council of Armenia (# 30), January 29, 1991.

[2] "Policy of Management of Urban Land With Its Legal Provision During the Transitional Period of the Republic of Armenia", Gurgen Mushegian and Petros Sogomonian, Yerevan, 1993.

Wide-scale privatization of the Republic's housing stock has not yet been accomplished. A housing privatization law was enacted during Mr. Josephs' mission, on June 29, 1993, followed by approval of a parliamentary decision implementing the privatization law on June 10, 1993. These laws address the issue only in generalities, however, directing the Government to develop detailed regulations by which privatization will take effect. Such regulations are currently under development and are scheduled for completion by December, 1993.

There are currently two methods by which one can acquire an ownership interest in an individual home or apartment. These include (i) acquisition of units from the state under a purchase system set in effect pursuant to an Armenian SSR law and (ii) purchase of a unit already privatized from another individual.

Although no final decisions have yet been reached as to the method by which housing privatization will be accomplished, it appears that a decision has been reached to allocate units, free of charge, to the present occupants. Current plans are to grant those given the opportunity to privatize their units a two year "window of opportunity" to exercise that option. There is also no intention, at present, to levy any form of tax (other than a predetermined nominal fee to offset administrative costs) for the privilege of privatizing a unit, although current plans are to charge additional fees and/or taxes at a later date upon the initial sale of the unit following privatization.

One of the most vexing problems that must be resolved before the amount of the fee can be set, is how to determine property values. Because the development of a private market is still in its nascent stages, reliable data has not yet been identified from which property values may be established. The problem is made more difficult by the fact that sales prices for most transactions are not accurately reported due to the significant tax imposed upon transfers (see Article VI, "Transfer Taxes", below). The absence of a regulated mortgage finance system, through which sales and loan values would be reported, further complicates the process of obtaining reliable data.

Although no decision has yet been reached on how the "re-sale fee" (or, for that matter, property values) will be determined, it will likely either be the cadastre value to be established upon privatization, or some percentage of an annual (or periodic) property assessment.

A description of the process by which privately-owned housing units are transferred, and their ownership recorded, is provided in Article V, Section A, below. See also "Armenia's Burgeoning Real Estate Sector: A survey of the Residential Real Estate Sector and the Means of Exchanging Private and State-owned Residential

Property in the Republic of Armenia," Nancy L. Najarian, Yerevan, January 1993, for a more detailed description of existing real estate companies, transfer requirements and current market conditions.

Recommendation -- Provide guidance in determining property values. A consultant could work with representatives of the Department of the Economy to establish real estate assessment methodologies to be applied in the privatization process. As a part of this process, the consultant should also assist with efforts to establish a system for accurate reporting and recording of land and housing transfer values. This data should be made available for public use.

C. Urban Lands

Urban lands have not yet been privatized. Although efforts are underway to establish privatization procedures, there are many decisions that must be resolved before this can occur. For example, it has not yet been determined if lands surrounding buildings will be privatized together with the structures built thereon, or if the state will retain ownership. Those who favor adopting the latter approach appear to be quite interested in the possibility of Armenia's realizing significant rents in this manner. Participants in several discussions during Mr. Josephs visit indicated special interest in the successes of Hong Kong, the "City of London", Hawaii and other cities that impose a wide-scale system of land leasing.

Others with whom Mr. Josephs met, however, recognized that such a system can be frought with difficulties. These individuals expressed concern about problems, such as the fact that long-term leases are generally less attractive to investors than freehold interests, that can arise in adopting such a system. Mr. Josephs explained that such a system may place Armenia at a competitive disadvantage in relation to other former Soviet republics. They were also extremely interested in administrative difficulties that can arise, as well as cheating and fraud that often occur which would divert funds from the government and disrupt markets by failing to identify and reflect true values. The political repercussions were also of considerable concern since rent increases that would likely be necessary to maintain and improve markets.

D. Retail/Commercial Space

Another issue with which Armenia is currently grappling is the use and control of retail spaces that have been built in the lower levels of numerous office buildings. Officials are undecided about whether or not to privatize such spaces and, if so,

whether such spaces should be given to building tenants (e.g. to a condominium association) or sold to individual entrepreneurs.

It is interesting to note that the conflict many elected officials and government representatives appear to feel with respect to this issue is representative of one of the problems they have faced in their privatization activities. There clearly is a commitment to privatize housing, land, industry, commerce, agriculture, etc. There is a strong hesitancy, however, arising from decades of central control of all commercial and industrial activities, which causes many in leadership roles to seek ways to retain State ownership of several potentially lucrative activities. Thus, for example, many of the most attractive retail locations in downtown Yerevan are occupied by State-owned retail establishments that, for the most part, have products and inventory far inferior to their privately-owned competitors.

The desire to privatize housing, land and other key institutions in the Republic is very strong, however, and is not in any danger of faltering. Although efforts to retain State-control over certain factors or elements of established industries or institutions may slow the successful establishment of free markets, any impediment they may create will likely dissipate or disappear as markets are established and the movement to a free market economy is carried to fruition.

III. WAITING LISTS; NEW DEVELOPMENT

Despite considerable progress to date, Armenia has a significant housing problem that will not be resolved by any level of success in shelter sector privatization. Most Armenians live in extremely over-crowded conditions, and the quality of even some of the best housing stock is low by American standards. Approximately 43,000 individuals are currently on waiting lists for apartments in Yerevan. Most of these already have units, but are living in conditions so crowded that occupants enjoy less than 5 square meters per person.[3]

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[3] Armenia's norm for the amount of space allotted per person for urban housing is currently 5 square meters per person of "gross floor area" (excluding balconies and closets). This is deemed to be the minimum threshold for acceptable living standards. If the number of occupants in a unit increases so as to cause a drop in the allocable space per person below this minimum level, the occupants qualify for a larger unit and may place their name on the official housing waiting list. It should be noted there are thousands of families who have placed their names on the waiting list. Waiting periods can often exceed ten years since there is such a considerable housing shortage. With new construction at a virtual standstill, this problem continues to increase.

An additional 32,000 individuals are currently on waiting lists because their units are considered sub-standard. Because of the severe shortage of available units, however, these individuals are not on a priority status. Numerous justifications exist, however, for being given priority. These include individuals who participated and were injured in the fighting in Nagorno Karabakh or Afghanistan, families with 5 or more children less than 18 years old, invalids, and families living in units in which there are less than 5 square meters per adult.

The housing shortage was seriously exacerbated by the loss of 5.4 million square meters of housing units during the 1988 earthquake. Estimates of replacement housing needs range from between 5.4 million to 8 million square meters depending on the planning norms applied in terms of livable space per person (see footnote 3). The problem was made worse by the considerable inflow of refugees from Azerbaijan, Georgia and other parts of the former Soviet Union, and those left homeless by the earthquake. Estimates of the number of units needed to replace housing destroyed by the earthquake range from between 35,000 and 58,000. This figure does not include the number of units necessary to provide housing for those currently on waiting lists, or those who would like to apply for a larger unit but realize no opportunity exists.

Housing construction, on the other hand, is at a virtual standstill. Although dozens of construction cranes can be seen across the skylines of many cities, especially in Giumry, Spitak, Kirovikan, Stepanovan and other cities of the earthquake zone, most of these stand idle above partially-constructed apartments, abandoned when funds ceased to flow into the country following the break-up of the Soviet Union, and as hostilities with Azerbaijan escalated.

In Yerevan, where the need for additional housing is tremendous, the city government has an annual capital improvements/construction budget of only 3.5 billion rubles (equivalent to approximately $2,750,000 at the average exchange rate of 1200 rubles per dollar during June, 1993). With construction costs at about $10 per square meter for new construction, it would take at least 60 years at current construction rates to even begin to meet the existing needs.

It is also close to impossible for private individuals or organizations to construct multifamily housing under current conditions. Land is not readily available from the city government, although it can be purchased for multifamily construction if the project

satisfies strict zoning and land-use requirements.[4] Furthermore, private developers must give at least 20 percent of the units to the city for allocation to individuals on the waiting list. Rents from these units are forfeited to the city government. Private assemblage is also difficult since it is limited to acquisition primarily for the construction of single family homes. More importantly, financing is not available for any form of land acquisition, housing construction, renovation or substantial repairs.

In view of these difficulties, it is not surprising that families must stay on Yerevan's waiting lists for an average of ten years before receiving a new unit.[5] Even with the incredible demand for additional units, the waiting lists appear to be well-administered, and units fairly allocated. In fact, there evidently is little opportunity to be moved up on the waiting list through bribery. The bribery that does occur reportedly is in order to be assigned a unit in a better part of the city or obtain a unit on a better floor.

Current rents are extremely low. I was told they average about 1 ruble per square meter or about 50 rubles for a four-person household living in a 50 square meter unit. This is sufficient to satisfy no more than between 5 and 15 percent of the total maintenance and service costs. The remaining 85 to 95 percent is subsidized by the government. Even with this large a subsidy, the amount expended is woefully inadequate to maintain units at a level that even remotely approximates western property maintenance standards.

Many within the government recognize the current rent structure is not satisfactory to adequately maintain the existing stock or to facilitate the creation of a broad-based private housing market. Some speak about increasing rents by the end of 1994 to levels sufficient to cover maintenance and operating needs as well as utilities. Under the current economic conditions, this seems to be an unrealistic expectation.

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[4] This may include satisfaction of the City government's annual housing construction plan ("teet-ghos"). The plans determine how many units may be constructed (including those partially-built units to be completed) or renovated within a city in a given year. Each of these plans must be approved by the Republic since funds for such localized construction are allocated on a national level.

[5] The average wait for an apartment for those fortunate enough to be employed by an enterprise that owns and maintains its own supply of housing is two years.

IV. PROPERTY RIGHTS

A. General

1. Establishment of Property Rights

Property rights in the Republic of Armenia derive from several sources. Article 8 of the Constitution of September 25, 1991,[6] as well as the August 23, 1990 Declaration of Independence, guarantees that land, mineral and natural resources, economic and intellectual property, and cultural resources are reserved to citizens of the Republic.[7] Article 9 of the Constitution also recognizes the rights of individual ownership within the Republic and provides for the protection of those ownership rights.

These basic rights are elaborated on, to a limited degree, by the Law on Property, enacted by the Supreme Council (Parliament) on October 31, 1990. Article 5, for example, establishes the property rights of individual citizens, the Republic, and collectives. It also provides for common ownership by what are referred to as joint enterprises, which may consist of any combination of (i) the Republic, (ii) citizens of Armenia and other countries, (iii) other domestic and foreign entities, and (iv) foreign states.

2. Lack of Clearly Distinguished Property Interests

Despite the establishment of individual property rights, there are few variations among forms of ownership or possessory interests, as there are in the common law, and few distinctions are drawn among existing interests. For example, several laws and decisions regulate the use, allocation and management of land. There is, however, no clear statement of the privileges and burdens attached to those who enjoy a right to own and/or use the land. Similarly, the recently-enacted Law on Housing Privatization, that is to be implemented pursuant to regulations presently under development, grants individual ownership rights to the current tenants of state-owned housing. Yet,

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[6] By the end of Mr. Josephs' mission to Armenia, a new Constitution had almost been completed in draft form. This draft will be translated into english and should be available by the end of July, 1993.

[7] Article 6 of the Law on Property describes the following as being the subjects of property rights within the Republic: land, minerals, lakes and streams, air space, animal and plant life, enterprises, organizations, buildings, structures, equipment, objects of material and spiritual culture, inventions, money, stocks and other property.

individual ownership rights are not clearly delineated and, if not established in yet-to-be-drafted regulations, will likely more closely resemble a use right rather than what Americans would deem to be a fee ownership interest.

Real, personal and intellectual property also are often treated in the same or similar manner in laws and decisions affecting property rights. The proposed Law on Property Tax, for example, includes taxes on business property (exclusive of intellectual property), buildings (but not land), boats and planes above a certain value (but not other forms of transportation such as cars and trucks) and personal property of individual citizens allocated for use by businesses. No material distinction is drawn, however, between these varied property forms, each of which is treated in the same or similar manner, with little distinction drawn between different characteristics, values, owners or use.

This lack of clearly-defined property rights is problematic. Not only does it blur distinctions between the rights of owners and lessors of land and buildings, it runs the risk of significantly restricting the establishment of a system that will create the flexibility necessary to encourage the creative form of real property investment and development characterized by "western" market systems.

Recommendation -- USAID/ICMA could assist in defining and differentiating among different property rights. It could help determined, for example, what rights exist; in what manner people may hold title to property; and what will be the characteristics of various forms of ownership. These definitions could, and should be adopted as amendments to the existing Law on Property.

B. Rights in Land

1. Rights of Landowners

The Republic of Armenia is firmly committed to the concept of land ownership by the citizens of Armenia. Privatization of the agricultural land has already been accomplished, and efforts are underway to privatize urban land (see Article II, "Privatization", above). The right to own land is confirmed in the Constitution that is currently in effect, and is likewise restated in the proposed draft of the Constitution that was completed upon Mr. Josephs' departure, but not yet translated. It is also reconfirmed in the Land Code and Law on Property.

2. Limitations on Allowable Uses

Although the rights granted to land owners are similar to the American form of fee ownership, there are significant limitations on this ownership right. For example, land may only be owned for one of four purposes. These are described in Article 9 of the Land Code as follows:

a. Peasant and Collective Farms
b. Land surrounding buildings (for personal gardening use)
c. Dachas (for personal gardens)
d. To develop residential housing

Thus, if an individual acquires property, his or her ownership right is limited by the use to which the property has been assigned. The following eight categories of land-use are defined within Article 3 of the Land Code:

a. Agriculture
b. Towns, Villages and Cities
c. Industry, transportation, communications and defense
d. Public Health, recreation, sports
e. Historical/Cultural purposes
f. Forestry
g. Lands abutting water resources
h. Preserves

Land has been allocated to the citizens only for the first two of these, however. It is also evidently extremely difficult, if not impossible, to obtain permission to change the designated land use for a specific parcel to one of the other designated uses.

For example, if an owner of an agricultural parcel wanted to construct housing, or dedicate the parcel to light industrial use, he would have to apply for permission to the Executive Committee of the Local Council.[8] If not rejected, the Local Council would apply to the appropriate ministry, in this case, the Ministry of Agriculture, who would then make a determination and forward its recommendation to the Government (known as the "Karavarutiam Apparat"). The appropriate office within the Government would

[8] Armenia is divided into 37 districts. This includes 8 districts in Yerevan and 2 districts in Giumry (formerly Leninikan). Each of these districts is subject to control by the Local Council, each of which is managed by an Executive Committee. Regional Councils are the local governments for the various communities in each region.

then consider the motion, and forward its recommendation to the Council of Ministers for action on the request. The decision for the designated land use on each parcel within the Republic, therefore, belongs ultimately to the Council of Ministers.

Because of the limited amount of agricultural land within the Republic, most requests for a change in permitted land-use have been, and likely will continue to be denied. Changes in land-use until now have usually been granted only if the soil has lost its productive value for agricultural purposes, or a decision is made by the Supreme Council to expand the boundaries of a city or town. (See Article X, "Land-Use", below).

3. Limitations on Development Rights

Another current limitation on land ownership is that it does not automatically include the right to develop the property in the manner desired by the landowner. For example, there are strict controls on an owner's ability to use his land in the manner he desires. In addition to the limitations described in the preceding section, there are a variety of controls imposed by local zoning and planning laws. (See Article X, "Land-Use", below.)

Furthermore, although the Land Code grants land owners the right to any income derived from the productive use of their property, this right is limited by the allowable land uses. The concept of allowing property to be developed to its highest and best use, as dictated by market forces, is not present within Armenian law and is not a concept with which most are familiar. The tradition of central planning, however, developed and well-entrenched over the past 75 years, is still very strong and is present in most thoughts about land use, city planning, and land management. The result has been the restrictions on allowable uses of land described above.

With respect to agricultural lands, ownership rights do not automatically include the right to improvements existing at the time of land privatization. If the same approach is adopted in urban areas, housing built upon land in cities may not belong to the land owner. In fact, current plans for urban land and housing privatization contemplate a division between ownership of the two. This could foster disputes between land owners and building occupants that, if not adequately addressed, could hinder privatization efforts. This would be especially true in frequently repeated situations where housing occupants have converted common areas surrounding or adjacent to multifamily buildings to private use.

Even where there has not been such unofficial privatization of common areas, there will be many instances where building occupants will want to exert collective control over what in the United States would be considered common areas for use as gardens, garages, playgrounds, etc., by building occupants. This may cause a direct conflict with the interest of the land owner who may have different uses planned for what (s)he may consider to be productive land immediately adjacent to a multifamily structure. Granting ownership of urban land without directly tying building occupants' occupancy and use rights to such parcels could, therefore, be problematic.

Although a final determination has not been reached as to whether or not urban land privatization will involve giving land to individual citizens, or if ownership will be retained by the State, current plans are to provide for separate ownership of land and improvements.

In the event a final decision is made to privatize urban land separately from urban housing, it will be necessary to clarify individual property ownership rights and develop a methodology for defining what rights building owners have to the lands on which the building stands. It will also be necessary to develop a system of long-term land leasing, to provide housing owners with the security their ownership rights will not be terminated by a landlord unwilling to extend their rights to occupy the land. Without such assurances, ownership of housing units will have little value, and efforts to privatize housing and create a supply driven by market forces is likely to fail.

It is interesting to note that ownership of land and housing has not been separated in agricultural communities, where ownership of farm plots has included the right to own individual homes. This has been due to the prevalent pattern of development in farming areas, which is characterized by homes clustered together in small communities adjacent to the fields. Each home includes a small plot for subsistence farming either attached to the house or in a near-by field dedicated to such use. When privatization of agricultural lands occurred in 1991, the lands allocated to the resident farmers included, out of necessity, the farmers' homes and subsistence farming plots.

Recommendation -- If a determination is made to implement wide-scale land leasing, USAID/ICMA could assist in the development of a comprehensive land leasing system. This could include the development of form leases, and training on the use and problems associated with long-term ground leases. Also, USAID/ICMA could assist in the development of a set of regulations to set this system into effect.

4. Limitations on Foreign Ownership

Another limitation on the rights of property owners is the prohibition against foreign ownership of Armenian land. Both the Constitution and Article 4 of the Land Code provide that land may not be owned by foreign persons or entities. This derives from a number of factors. Most important is the concern that, with an extremely limited land mass[9] and a weak economy, it would be possible for foreign interests to purchase a large percentage of Armenian land within a short period of time. This fear is made especially strong by the wealth and number of Armenians living in other parts of the world who, current legislators fear, would have a strong desire to purchase property in their native land.

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[9] The total land mass of the Republic includes 2,974,300 hectares. Fifty-five percent of this, or 16.37 square kilometers, is habitable.

Another factor is the country's history of having seen its land mass significantly reduced, as a result of Stalin's gift of Nagorno Karabakh to Azerbaijan, and its loss of additional lands to Turkey and other nations. There is both tremendous pride in the one-time extent of Armenian lands and peoples, and a strong resolve to assure that the present Republic does not lose additional territories. Along with this resolve is the determination not to lose control of the lands that currently exist within its borders to foreign nations.

Limitations on the rights of foreign land ownership could stand as a significant barrier to long-term foreign investment in Armenia. This is especially true for foreign lenders where the inability to obtain an enforceable security interest (in the event of default) in property serving as collateral for a loan would likely be enough to prevent the loan from being made.

Due in large part to its current troubles with Azerbaijan and the resulting energy and products blockade, Armenia is ranked at the very bottom of a long list of nations in terms of its desirability as a place for foreign investment. Efforts therefore need to be made to attract foreign investors, not to discourage their investment with unnecessary restrictions.

Yet, even though there appears to be a strong desire to attract foreign investment to Armenia, there is an even stronger fear of losing ownership of this finite and limited resource. Thus, the debate over whether or not to allow foreign land ownership is one of the most controversial topics under consideration by the Supreme Council and members of the Government and ministries.

Mr. Josephs had lengthy discussions regarding the need to permit foreigners to own land, at least for the limited purposes of (i) serving as collateral for a loan, even if foreclosure would result in foreign ownership and (ii) use by foreign nations for construction of an embassy. There appeared to be great interest in the impact the prohibition of foreign ownership would have on the willingness of foreign financial institutions to make loans for investments in Armenia. Recommendations of permitting foreign ownership in limited circumstances, and either restricting re-sale to Armenian citizens or requiring that foreign owners provide Armenian nationals a right of first refusal upon re-sale, were met with enthusiasm.

Recommendation -- USAID/ICMA could provide significant assistance by working with the Government in preparing laws that permit foreign land ownership in the limited circumstances described above.

C. Forms of Concurrent Ownership

Although property may be jointly held, leased, or owned in many forms, including through collectives and enterprises, two basic forms of concurrent ownership applicable to individuals are recognized by Armenian law. Referred to as "joint" and "shared" ownership, these are most closely akin to the common law concepts of joint tenancy and tenancy-in-common.

1. Joint Property

The concept of joint property is referred to in the Law on Property (Article 4), and its characteristics described in Articles 117-143 and 530-564 of the Civil Code. These were not available in translation at the time of Mr. Josephs' mission or at the time this report was prepared. Therefore, the description of characteristics of these forms of ownership should be confirmed when an english translation is completed.

Like the common law concept of joint tenancy, joint owners each hold an undivided interest in the entire property. They thereby enjoy the right to possess and use a property in its entirety, subject to the other joint owners' interests, rather than merely a predetermined portion that reflects their percentage interest. I am also told that joint ownership includes the right of survivorship. Unlike common law joint tenancy, however, owners of joint property in Armenia need not receive their interest in the property at the same time and from the same conveyance.

Limitations on this form of ownership include the prohibition of transfer without the consent of each of the other joint owners. In the event of a dispute in which one owner wants to forfeit his or her interest, the others would have to agree to such person's share. In the absence of agreement, appeal could be made to the District Court for an equitable division of the property.

Joint property is the most common form of ownership among family members. Upon the privatization of agricultural land pursuant to the Law on Peasant and Collective Farms, creation of joint ownership of what are referred to as "peasant farms"[10] was seen as the most expedient method of avoiding significant disruption

[10] Peasant farms are what were referred to during the Soviet period as "peasant yards" (i.e. those parcels attached to a "farmer's" home that were dedicated to such individual's personal use for subsistence farming under the collective farm system). Current peasant farms include both (i) the lots attached to one's home to be used for subsistence farming and (ii) the actual farm lots granted to each farmer (or farm

among family members, by closely approximating the former use and occupancy rights enjoyed under Soviet law. Joint ownership among family members was therefore achieved by creation of peasant farms which were registered to a head of family. Anyone living within the family could thus become a member of the peasant farm.

Single family homes and dachas also are often held among family members in joint ownership. Furthermore, since housing privatization rights are likely to be granted to each adult residing in an apartment unit, and will have to be unanimously approved, joint ownership will provide the most expedient ownership form for family members with co-equal ownership rights. Therefore, most apartment units, when they are privatized, will likely be held in this manner.

2. Shared Property

Shared Ownership is similar to the common law concept of tenancy-in-common. Shared owners each hold an undivided interest in a property and thereby enjoy the right to possess and use it in its entirety, subject to the other joint owners' interests. Unlike joint ownership, however, shared ownership does not include the right of survivorship. Furthermore, each owner enjoys a specific, divisible percentage interest in the property which facilitates its transferability.

Currently, shared ownership is evidently found only on collective farms, where each shared owner has a specified percentage ownership interest. The Family Code (not available in translation at the time this report was prepared) prohibits use of the shared property form of ownership among family members, reserving its application to those un-related individuals electing to share ownership in an arms-length transaction (most commonly a collective farm).

Clearly, other forms of concurrent ownership exist at the present time. For example, Armenian enterprises, similar to American corporations, are characterized by common ownership by numerous individuals. Similarly, collectives created during the Soviet era and now privatized, are commonly owned. Finally, although it is not certain at this time if the condominium will be adopted as an ownership structure for multifamily housing properties, such a structure would represent merely a variation or modification of these existing forms of common property ownership.

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community family) under the 1991 agricultural land privatization, and that used to be a part of the collective farm (i.e. the collective farm was cut up into lots and each farmer received one of the lots in the larger field).

V. CONVEYANCING/TRANSFER OF PROPERTY

A. Sales

When Armenia's agricultural lands were privatized in 1991, a three year moratorium was placed on their re-sale. Therefore, with one exception, no private sales of land have occurred since enactment of existing property laws. There have been, however, a number of sales of privately-owned single family homes, dachas and apartments that were either granted or purchased from the State. Since enactment of Decree Number 209 of the Armenian Council of Ministers on March 13, 1991, pursuant to which lands associated with privately-owned houses and dachas were privatized, transfers of such homes included transfer of the lands to which they were attached.

Housing sale transactions are regulated, in part, by the Civil Code's general provision regulating "obligations" (i.e. Chapter 3). Although the sales provisions have not been translated at the time this assessment is being prepared, the Code evidently contains a number of requirements similar to those found in American law with respect to form and execution of contracts. These, I am told, apply to the sale of apartments.

The procedure for selling housing (with or without land attached) is as follows. The parties agree to the terms of the purchase and enter into a written agreement. The agreement is then presented to a notary[11] for approval and the notary fee is paid, after which a nominal tax is paid to the District Council. At this point, the transfer is registered with the Executive Committee of the Local Council. In order to obtain the notary's signature, the purchaser must obtain a certificate from the Bureau of Inventorization, an independent organization.

The Bureau of Inventorization maintains ownership records for all units within its jurisdiction. The statement will indicate that the property is privately owned and that there are no additional claims made against the property or its owner(s). It also will

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[11] Notaries are a function of, and are employed by, the Ministry of Justice of the Government of Armenia. They perform much the same role as organizations responsible for registering title in those jurisdictions where the government issues certificates of ownership -- in effect, assuming responsibility for insuring title.

The Justice Ministry is considering licensing private notaries. It is not certain at this time if the taxes collected by
notaries upon the transfer of property will be modified or, if private notaries are used, what additional fees they will be entitled to impose, if any.

indicate there are no additional claims of ownership. In effect, the Bureau authorizes the applicant's ownership right.

Recommendation -- Existing laws do not adequately describe the wide range of property rights and interests that need to be established if a private system of property ownership and development is to be established. A detailed study and inventory of laws and regulations that address property rights should be prepared, and a comprehensive property law proposed which defines the range of property use alienation rights and interests. The manner in which title may be held, what rights and obligations may be transferred, and in what manner title may be held should be examined. Limitations on the exercise of property rights and relationships between parties with competing interests should be described in detail. Attention should also be paid to resolving conflicts between provisions of existing law.

B. Liens and Restrictions

It should be noted that local governments may impose a lien against the property in the event the owner has been accused of criminal activities or other prohibited actions. Such liens will be imposed pending trial. In the event of a decision against the property-owner, the government may take the property as a form of punishment (e.g. in a bribery action).

Once the contract is approved by the notary, the new owner's interest can be officially registered with the Executive Committee which will then issue a certificate of ownership. Possession of such a certificate provides evidence of one's title to the property and, in that respect, is akin to a deed of title. Upon issuance of such certificate, the purchase price may be paid and the transfer is complete.

The new owner then must make arrangements for management of the unit. If it was purchased from the Republic, the local "Zshek" (real estate management organization) would have to be notified if they are to continue to have management responsibility. Owners currently have the option of electing to continue to use Zsheks to manage units or hire a private organization.

Recommendation -- Such use of property liens as a criminal enforcement tool is an extremely limited exercise of government control. The imposition of liens can be an extremely effective enforcement mechanism that should be closely tied to development laws, zoning and land-use restrictions and other regulations. I also query whether there are more effective deterrents to criminal activities and punishments for violations of the criminal code and recommend that such alternatives be explored. This may

suggest amending the criminal code so as to not permit the taking of land as a punishment for criminal action. A simultaneous study of other countries' lien laws might generate a list of recommendations as to how they can be more effectively used to enforce land-use and development laws.

C. Exchanges

Under Soviet-era law, land exchanges would have been permitted only under special circumstances, such as to facilitate the easier identification of boundaries or to make land more productive by permitting its more efficient use.

Under current law, the Land Code permits contracts for any type of transaction. Furthermore, Article 255 of the Civil Code implicitly authorizes exchanges by referring to sales and other Code requirements regulating property transfers. Thus, to determine what procedures would apply to a property exchange, one would modify existing sales provisions to fit the parameters of the specific transaction.

D. Inheritance

The procedures by which property may be conveyed through inheritance is described in Articles 530-564 of the Civil Code. Furthermore, Article 24 of the Land Code describes the right to convey land by inheritance. These provisions describe two methods by which property may be transferred by inheritance -- by devise (will), and by law (intestacy).

1. Devise

Although there is a limited history of private ownership of land and buildings in Armenia, there is a well-established procedure for devising property (i.e. for transferring ownership of real property through the writing of a last will and testament). On the average, it takes between eight and twelve months to probate a will. Named beneficiaries have six months to accept or reject devised property after the will is first read. This is accomplished by appearing before a notary, proving they are the person named in the will, stating under oath that they are entitled to the devise, and declaring whether or not they wish to accept it.

The notary then publishes notice of the declaration in a general circulation newspaper and asks for any other claimants to appear before the notary and present their claim. If, within six months after receipt of such declaration, the notary does not receive any similar claims from other parties, the notary will issue a certificate of

ownership to the claimant. If more than one person makes a claim of right to the property, the parties will attempt to resolve their differences, which frequently will involve an equitable division.

If the parties cannot come to terms, the property (or the claim) will be submitted to the District Court, where a decision will be made as to how the property is to be divided. If the property cannot be separated into parts, one of the parties will be awarded monetary compensation.

There is a unique characteristic to the Armenian law of devise. Because so many family members live together (including parents, adult children and their spouses), there is recognized a legal responsibility to provide for an expanded set of dependents. Not unlike American law, a devisor cannot completely disinherit his spouse or fail to provide for dependent children. Armenian law expands on that responsibility to include those other family members, including adult or minor children, adult siblings, parents and grandparents, who are dependent upon the deceased for support. If a devisor fails to adequately provide for any of these dependents, the court will "re-write" the will to give those individuals for whom the deceased should have provided, a share not less than 2/3 of what such individuals would have received if the deceased's property had been divided under the intestacy laws.

2. Intestacy

Formal procedures exist for disposing of an individual's property where no will has been prepared. Although Articles 530-564 were not available in translation at the time of Mr. Josephs' mission or preparation of this report, Article 535 evidently provides that the following family members are entitled to an interest in the property of a devisor:

spouses
dependent children
dependent parents
children of the testator born after the testator's death
dependent brothers and sisters
grand-parents

A more detailed description of the process by which an individual's property is distributed upon death, where no will has been prepared, will have to await receipt of an english translation of the appropriate Civil Code provisions.

VI. TRANSFER TAXES

Under Soviet law, a stiff duty was imposed by the State upon the transfer of ownership of homes or apartments. In the event a transfer was made to someone who was not a member of the transferor's family, the tax was ten percent of the property's value. If the transfer was to a family member, a three percent tax was imposed.

With the Soviet-era law still in effect, there are understandably, few transfers of ownership to non-family members that are actually reported. For those that are registered, the parties often declare a price far below the actual transaction amount. Adding to the disincentive to accurately report transfer values is the fact that no capital gains tax is imposed on income realized in such transfers. Furthermore, since no property tax law has yet been established, people who fear the eventual imposition of a high tax are anxious to establish a low value by reporting an artificially low transaction price.

Efforts are currently underway to resolve this fundamental problem of how to design taxes that (i) raise badly-needed revenues, (ii) are enforceable, and (iii) fail to impose an overwhelming burden on taxpayers. Efforts are also being made to determine how taxes on jointly-owned property should be levied (i.e. on each of the individual owners or on the property itself) since many apartment units are currently registered in the names of numerous individuals. Officials recognize they do not want to be responsible for collecting only a percentage of the tax imposed on a property from each of the many possible property owners. Yet, they appear to be unconvinced that taxing one owner who owns only a portion of the property should be responsible for collecting a share of the taxes owed from each of the other owners.

The failure of many to accurately report sales data upon transfer of real property raises the important issue of how to accurately assess property values. With widespread cheating on reporting of property values for tax purposes, the absence of a mortgage finance system, a weak or non-existent system of income tax enforcement and no capital gains tax requirement imposed upon the sale of real property which would encourage purchasers to establish higher cost bases in their properties, there is little hope of creating a system of accurately identifying property values.

The issue of accurately determining values is also important to the process of imposing the one-time tax on the initial re-sale of housing after privatization (see Article II, above). There is considerable debate over whether this should be established based on an initial land cadastre or as a percentage of the property's value at the time of sale. Government officials hoped to impose the one-time tax only on the value of the property transferred. Since the goal was to tax only the value of the property transferred upon privatization, as adjusted by inflation and general improvements on

the economy, an effort was made to determine a method of taxing only those increases in value created by government infrastructure investment and improvements in the market instead of improvements made by individuals.

These problems should begin to dissipate somewhat as markets become more active. Furthermore, development of a mortgage finance system should help, provided regulation of financial institutions requires accurate reporting of lending data, and such regulations are enforced. Implementation of a land and building cadastre will also assist in resolving these problems.

During Mr. Josephs' visit, considerable concern was expressed over how to assess property values. Under consideration were the following: developing a system establishing cadastre prices as a property's value (such figures would be updated annually); establishing an annual (or some other periodic) assessment of property values; using properties' assessed values (or some percentage of those values) as the basis for the property tax; and, using reported sales prices to establish market values for assessment purposes.

It should be noted that a private company named the "Real Estate Exchange" has reportedly developed a relatively sophisticated methodology for assessing the value of privately-owned apartments. Their determinations evidently consider such factors as current sales data, location, building and land-use restrictions, availability and quality of services and other market factors. Future advisors should take advantage of progress made to date by such private sector pioneers who have been involved in the early stages of establishing real estate markets.

Recommendation -- USAID/ICMA could provide valuable assistance in establishing a system for accurately determining property values and assessing property and transfer taxes. Existing laws and practices are inadequate and current plans appear in many respects to be headed in the wrong direction. This is especially important both in order to (i) raise badly-needed revenues without encouraging tax fraud or discouraging private investment and (ii) create a basis for establishing real estate sales and rental prices.

VII. OTHER TAXES

Members of the Supreme Council and the Government of Armenia are individually and collectively considering the implementation of numerous tax laws and provisions. During Mr. Josephs' mission, Government representatives described no

less than four new real property-related tax laws, and amendments to existing legislation, that had either been formally proposed or were under development. Included were the following:

Land Tax
Property Tax
Transfer Tax
Recording Tax

Numerous additional taxes were also under consideration in areas not directly related to real estate. There appeared to be no or little understanding of the aggregate impact such taxes would have on individuals, whether cheating could be prevented, and whether they could be fairly administered or accurately enforced. There also appeared to be little recognition of the fact that rates could be adjusted to generate a given amount of revenues or that specific taxes could be targeted to satisfy specific government needs.

During the mission, considerable time was spent discussing what taxes should be imposed and how they should be implemented, which jurisdiction should levy such taxes, what rates should be used, whether graduated taxes or fixed fees are most appropriate, what impact specific taxes would have on individuals' budgets, whether specific taxes would generate revenues sufficient to warrant their imposition, and other related issues.

Recommendation -- Judging by their unsuccessful experience with the transfer tax, the wide variety of additional taxes presently under consideration, and the considerable need to generate revenues, officials would be well-advised to examine these and related issues and develop a coordinated policy for imposing taxes.

VIII. TITLE REGISTRATION

The current method of title registration employed in Armenia is a modified form of Torrens system. As noted in Article V, Section A, above, upon transfer of title to land, a single family home, or an apartment unit, the Executive Committee of the Local Council issues a certificate of ownership that is conclusive as to the applicant's interest in the property. This certificate is to be issued only after confirmation by the public

notary and the Bureau of Inventorization that there are no competing claims to the subject property or personal claims on record against the applicant.

Problems with the current system may develop, however, as urban land and housing privatization proceeds. Although there exists a form of land ownership inventory (made simpler by the fact that most real property, until recently, was owned by the Republic), it apparently is not comprehensive, failing to identify ownership of essential items such as common and public areas, alleys, streets, and land adjacent to public and private buildings. It also was not clear if the boundaries of individual urban land parcels were clearly delineated by a scientifically-derived system of measurement.

The problem of accurately identifying and registering parcels will likely be made more difficult if a comprehensive system of land leasing (rather than transfer of fee ownership) is adopted in the process of privatizing urban land. At the same time, the need for an efficient and accurate title identification and registration system will become more acute.

Recommendation -- Without a system to clearly identify individual parcels, the ability to freely sell and transfer land and improvements will be significantly hindered. A real property inventory should be undertaken that identifies all parcels, the ownership of which shall then be retained by the State (including, for example, alleys, streets and land adjacent to buildings to be owned by the community) or transferred to private ownership. A rational system of title registration should then be developed which not only accurately reports ownership interests but also provides the flexibility necessary to allow for public access to and use of information must be developed.

IX. PLEDGE/MORTGAGING

Banks in Armenia currently are not making loans for the purchase and/or development of real estate. If a loan were to be made, it would involve a rate so exorbitant (e.g. 200 percent per annum) that the project could not proceed. Several reports were also received that, because of the lack of available credit and liquidity, the instability and uncertainty reorganizing the development of real estate markets, and the paucity of banking and lending regulations and enforcement of those few rules currently in effect, bribes (in addition to exorbitant rates of interest) are considered a prerequisite to the granting of any real estate loan.

The refusal of the banks to lend funds is due, in large part to the severe cash shortage and to the uncertainty of future real estate values and markets. Thus, even though the government encourages banks to make loans for housing in the

"earthquake zone", most housing construction in that region is at a virtual standstill, evidenced by the hundreds of construction cranes standing idle at half-built housing construction sites in Spitak, Giumry, Stepanovan and Kirovikan.

Until recently, mortgage lending activities have been regulated by the "Obligations" provision (Article 195) of the Civil Code. Only banks have been permitted to make real estate loans (i.e. take real property as collateral to secure a debt obligation), although, as explained below, individuals have been permitted to pledge property to secure obligations already incurred. In reality, however, individuals make personal loans on a regular basis. This is especially true since the banking system barely functions at the present time, and it is virtually impossible to borrow funds from a bank to purchase a building or apartment unit.

Neither state nor commercial banks are permitted to make personal loans (i.e. accept personal property as collateral for a debt obligation). Only institutions known as "lombards" (akin to American "pawn" shops) have this right. Although each Local Council's Executive Committee has discretion over the types of property such lombards are permitted to accept to secure a loan, lombards evidently have never been granted authority to accept anything other than personal property as collateral.

Article 195 of the Civil Code describes some of the procedural requirements for accepting a pledge of collateral. For example, loan agreements must include the parties' names, their place of residence, the property to serve as collateral, its value and location, the obligation being secured and the time of its required satisfaction. If the debt is not satisfied as required, the party to whom the obligation is owed may file a suit with the administrative court in the district in which the property is located, which may order that the property be sold and the proceeds used to satisfy the obligation. It is not clear if this practice is commonly used or whether some other form of equitable relief is more frequently granted to the creditor as is evidently often the case.

There are no requirements that describe the manner in which foreclosure sales are to be conducted, although they inevitably are in the form of court-ordered auctions, conducted by court officials. The obligor has no right of redemption following foreclosure, as is true in most American jurisdictions. Furthermore, if the proceeds of sale are inadequate, the creditor may return to court to seek a deficiency judgement.

The foregoing procedures may change with the recent enactment of two laws "On Banks and Banking" and "On Establishing a National Bank of Armenia". Copies of these newly-enacted laws became available only as Mr. Josephs was departing from Yerevan. They are currently in translation. It is highly unlikely, however, that they

contain provisions that address secured lending activities. A law on pledge is evidently being drafted by the Department of the Economy but was not yet available upon Mr. Josephs' departure.

Recommendation -- This is an area where USAID/ICMA could have a real and substantial impact. There is a tremendous need to attract investment and create a mortgage market. Such a goal will never be accomplished, however, until there are well-established procedures that facilitate the mortgaging of real property. Establishment of clearly delineated property rights, procedures for collateralizing debt, securing property interests, enforcing security rights and transferring those rights and obligations must be established before lenders will be willing to invest capital in a developing market such as that under establishment in Armenia. Resolution of other issues involving allowable forms of urban land tenure (e.g. will urban land be leased or will fee ownership be permitted; will foreign investors have an opportunity to own land in limited circumstances to facilitate making loans) would also help in this regard. A USAID/ICMA adviser should work with Armenian representatives in an effort to develop a rational coordinated set of policies to foster the development of such mortgage markets.

X. LAND-USE/LAND INVENTORY

As noted in Article IV, above, there is a well-established system of controls on allowable uses of land. Permissible land uses, established with the approval of the Republic, are registered with the Executive Committee of the District Council. Master plans have been prepared that restrict development in given areas to specific uses. Rather than identifying permissible uses, development densities, parking requirements and restrictions, and other factors commonly included in most American communities' master plans, those in use in Armenia appear to set only general parameters for allowable uses on given streets or within certain districts. Local building codes have been imposed in many instances. These appear to have been only sporadically enforced, however, and are now largely ignored.

Local government's ability to control land-use decisions within the cities is limited since considerable control over city growth and development is exercised by the Republic through its Council of Ministers. Local government exerts authority over matters such as (i) how common areas are to be used; (ii) what fees are to be charged for retail participation in local markets and parks; and (iii) allocation of retail space on the first floor and basement spaces in apartments. Local governments also exert some authority over local building and construction standards. From observations and discussions, however, it appears that many local policies, especially with respect to

building codes and standards, are ignored and rarely enforced. The problems this attitude has created have been exacerbated by the current severe shortage of building materials and money.

These problems will become more difficult for local officials to overcome after privatization. This is especially true with respect to non-conforming uses. Many individuals have built additions on their units that not only are unauthorized, but also are not in conformance with local building standards. Many of these are built in areas including driveways, gardens and parking areas, that would otherwise be reserved for common use. Policies will have to be established to determine what should be done with these non-conforming uses, whether individuals who built such non-conforming structures should be entitled to retain possession, whether they should pay for their ownership right, or whether ownership should transfer to the government or to other building residents.

Despite the existence of laws that govern permissible land uses, no comprehensive national zoning or land-use code exists at this time. Such a code has, however, evidently been prepared and exists in draft form. It reportedly will include (i) a status description of existing uses of land; (ii) principles for the use of land; (iii) a restatement of who may own land (note this is already described in the land law); (iv) master plans for the major cities; (v) criteria for determining what lands may be urbanized; (vi) new procedures for arguing land cases; and (vii) what is the extent of local governments' jurisdiction and duties with respect to urban land. What such a law should include, however, is a clear delineation of a land-owner's right to use his/her real property in whatever manner such owner determines, provided such use does not violate existing law. In other words, the property owner should have the right to determine what is the highest and best use for a given property and convert it to such use, provided he follows all land-use zoning and development laws and restrictions in the process.

There also needs to be a comprehensive inventory of all urban land parcels. In fact, buildings are not currently identified with specific plots of land, and boundaries between parcels are either difficult to identify or non-existent. Privatization of urban lands, as well as regulation of their use, will be made more difficult if property lines are not clearly delineated. This will become even more important in the event a decision is made to privatize urban land and residential structures together. Since all lands were formerly owned by the Republic, there appears to be little understanding of the value of creating lines of demarcation between land parcels.

Many with whom Mr. Josephs met were therefore very interested in the advantages of creating individual parcels on which one (or several) buildings sit, each of which is surrounded by open space designated for common use with street and alley access. They were especially interested in the fact that designation of ownership of alleys and common space behind buildings could help them exert more control over the use of such areas and keep individuals from converting such "public" areas to private use, as currently happens with great regularity.

Recommendation -- Land planning would benefit significantly from rethinking the relationship between government and the private individual. A new approach to determining what a land owner may do with his or her property as of right, as opposed to what uses are permitted at the discretion of some governmental entity, must be established that can serve as the foundation of a free market system. Zoning, land use controls, special permitting procedures should serve to channel and foster desired development, not to impede or prohibit change. An effort should be made to develop a system that encourages efficient and productive land use in a manner that opens opportunities for private land ownership and development.

Much of the responsibility for land planning and management should be redistributed to the local level. Control of all development activities from the federal level is cumbersome and does not allow for efficient management practices. Those responsibilities retained by the federal government should be centralized in one office that would exercise broad authority. For example, a special commission should be established, that would report to the Council of Ministers. Such a commission could then become the Republic's central authority for all related decisions. It could coordinate and monitor activities and decisions that would be carried out by the local zoning authorities. Also, an inventory of all existing land parcels should be undertaken as the first step in the urban land privatization process, which should include the clear delineation of land parcels. A USAID/ICMA consultant could be extremely helpful in addressing each of these areas.

XI. EMINENT DOMAIN

Although there is no formal law on eminent domain which elaborates on the purposes for which government takings will be permitted, and the procedures by which such condemnations must be carried out, the Land Code (Article 21.3) provides that land may be confiscated, subject to law, for government or public purposes (Art. 21.2), or in the event a landowner fails to use the land for its approved purpose. Article 31 also authorizes takings, but limits them to cases of "extreme necessity". Takings are also justified in the event "historic/cultural artifacts" are discovered.

The concept of compensating a landowner for his loss upon a public land condemnation is already well established in law. Pursuant to Article 57 of the land law, compensation must be provided which, it is interesting to note, is to include lost profits. Article 31 also provides that in the event a private plot of land is taken in this manner, payment may be made by providing the property-owner with an equivalent plot.

There apparently are no clearly-established criteria for determining what would be a situation that would justify the government's taking of private property. Under an early (1928) Soviet-era law, criteria were established for permitted government takings of whatever limited private property existed. Brezhnev evidently dismissed the law, claiming the government was authorized to take any property it deemed appropriate or necessary.

The concept of compensating private land-owners for public takings is apparently included in the proposed Constitution that has been prepared in draft form. Although there is no common law within the Republic, policies for determining when a taking may be justified will likely be developed over time as specific needs arise. For example, there already is concern that the privatization of agricultural lands took place too quickly and did not include adequate long-range planning for future public needs. One result has been that some privatized lands contain minerals and other resources that should have been reserved by the Republic.

From my conversations with several members of Parliament, there clearly is an interest in establishing a method for recapturing those limited natural resources and reserving them for use by and for the Republic. On the other hand, these same individuals recognize the government does not have the financial resources to compensate persons whose lands (or mineral deposits) are taken by government action, if compensation, including lost profits, are required. As mineral or other natural resources are discovered, there will be an increasing demand to exploit those resources for the public benefit. If the country's economic problems continue, a strong possibility exists that some modification to the existing condemnation laws will be enacted that limit the number of instances of required compensation for public takings. Therefore, it is essential that any efforts to reconfiscate lands already privatized should be made as soon as possible. Furthermore, any changes in policy with respect to mineral exploitation should be made at the present time.

Recommendation -- One area where USAID/ICMA could have a tangible impact would be in the area of condemnation/takings. Preparation of a draft law on condemnation and guidance on how to determine when a taking would be justified and what form of compensation would be required would be extremely helpful. Takings

should be permitted only in rare circumstances. Certain parameters should be established to be followed to justify this extreme action. Alternatives to takings may also be developed. For example, rather than taking a landowner's property in the event architectural artifacts are discovered, it may be more appropriate to require their excavation before any development or further use of the land proceeds. Furthermore, it is important that in such circumstances, any takings that are made by the Republic are done pursuant to strict procedures that guarantee due process to the landowner. Therefore, it will be necessary to prepare a special law or regulation, or amend the existing land law, to establish formal condemnation procedures. USAID/ICMA can be helpful in this regard.

XII. LEASING

After decades of maintaining a system under which the vast majority of housing units were owned by the state, procedures for residential leasing are well-established. Rental rates have been extremely low (see Article III, above) and, at current rates of exchange, approximate less than one dollar per month, or less than one sixth of the average monthly income.[12]

In order to reside in any one of the Republic's 37 districts, one must first obtain the permission of the Executive Committee of that district's Local Council. This can be problematic if one wants to move to Yerevan from another city, or if one wants to move into a more desireable Yerevan district from one that is less desireable. For example, permission will not be granted until one identifies an available unit. Because of the extreme shortage of available housing and long waiting lists, identifying an available unit in a desirable district will be extremely difficult, if not impossible.

When someone wants to move within Yerevan or to a new city for his or her employer, the employer may make an apartment available. Employers provide housing in two forms. The first, known as "enterprise housing," is owned by a business and provided on a rental basis to its permanent employees. The second is known as "hostel housing" and is provided to an employee for a specified period of time (often two or three years). Some of these have shared common facilities such as kitchens and bathrooms and can resemble a dormitory living situation.

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[12] The average monthly state income was between 4,000 and 7,000 rubles at the time of Mr. Josephs' mission. [Note - this does not include secondary incomes.] At the average June, 1993 exchange rate of 1200 rubles, this would equal a range of between $3.33 and $5.83.

If one is fortunate enough to identify an available unit, (either through an employer, a friend or family member who will share, or as a result of being allocated a unit from a waiting list) or elects to purchase a unit, one obtains an "order" from the Executive Committee granting permission to occupy the unit. This order must then be taken to the local Department of Internal Affairs to obtain a "propiska".

Every adult (16 years or older) obtains a "propiska" registering their right to live at a given location (i.e. in a given home or apartment unit) when they reach the age of majority (i.e. 16 years of age). Temporary propiskas will be issued for short-term periods, such as when one goes to school or visits another city (e.g. for a work assignment) for a specified period of time. It is evidently rare, however, for one to obtain a temporary propiska if living in another unit for short time because of the administrative difficulties usually experienced when registering with the local authorities.

Sub-leasing of state-owned apartments is permitted under the Housing Code. The consent of all adults registered to live in the unit must be obtained before such a sub-let will be permitted. The sub-tenant must obtain a new propiska from the Executive Committee of the Local Council in order to sub-let an apartment. In practice, this is rarely done for sub-leases of short duration (such as a year or less). Also, very few individuals register any form of sub-lease since the income derived would be subject to the income tax. Therefore, although the Housing Code requires the execution of a contract of sub-lease and registration with the Local Council, it is rarely done.

XIII. LAW ON CONTRACTS

No law on contracts has yet been developed, although there is a Civil Code provision on Sales. Although an english translation of such a provision was not available at the time this report was prepared, it evidently describes many of the requirements found in the commercial sales provisions of the American Uniform Commercial Code. For example, contracts in excess of a specified amount must be in writing, signed by parties and sealed by a notary. Contracts must be registered with the Executive Committee of the Local Council (although few individuals comply with this requirement since it would result in the imposition of additional taxes). A law on contracts for the sale or transfer of land has also not yet been developed since private land ownership is extremely new within the Republic and the moratorium on the resale of privatized parcels will not expire until 1994.

Recommendation -- It will certainly be necessary to develop a basic law on contracts and a comprehensive set of laws and regulations to govern commercial transactions. With many other priorities on which to focus, and the broad applicability of such laws on areas of business enterprise in addition to the shelter sector, this has not been set as an area for immediate attention. It would make more sense for a USAID/ICMA contractor to focus attention on assisting with the development of laws that describe the mechanics of real property sale, transfer and registration.

XIV. TENANTS' RIGHTS

No landlord-tenant law similar to what is commonly found in the United States has yet been developed in Armenia. This may be due, in part to the lack of tradition of renting housing in arms-length transactions during the Soviet period. Limited provisions describing allowable uses, size of apartments, minimum number of square feet of livable space per occupant, the circumstances under which a family is entitled to rent a larger unit, and execution requirements (i.e. leases must be in writing and signed by both parties), exist in the Civil Code (Articles 105 et.seq.). Yet, there is little focus, in law or in practice, on preserving the rights of tenants and balancing them against the needs and interests of landlords, or recognizing and addressing the natural tension that can exist between the two. Furthermore, it is uncertain if these provisions will expire upon privatization and, if not, in what manner they will be modified.

The Housing Code reportedly grants tenants the right to sublet their units under prescribed circumstances. Although a copy was not available in translation at the time this report was prepared, Article 53 evidently provides that family members, and those living with tenants, have the same rights and duties as the tenant. Permission to sublet space for more than a few months is supposed to be obtained from the Executive Committee of the Local Council. In practice, however, this requirement is rarely observed unless the sublet is to last for a period of years. There is also likely to be a loosening of this requirement, if and as government control over individual movement and activity within the Republic continues to dissipate.

Article 95 of the Civil Code evidently provides for eviction if a unit is sublet or occupied without obtaining the prior permission of the Local Council. Article 86, I am told (translation was not available at the time this report was prepared), reportedly lists some of the circumstances under which an eviction may be ordered. With rents either non-existent or merely a token payment, it is not clear if non-payment is a cause for eviction under this provision. Article 86 also evidently describes the procedures to be followed in carrying out such an action. These include consulting with the attorneys (referred to as the public prosecutor or district attorney) for the district in which the property is located, and adherence to formal legal proceedings, including court action.

It is interesting to note that, unlike American law, which requires adherence to due process procedures, including the right to notice and a right to present one's argument to an administrative body or court, the district attorney has the right to make a final administrative decision in a limited number of cases. Thus, a district attorney may implement an "administrative eviction" in two cases. The first is when a person has occupied a unit illegally. For example, where there is no documentation from the Local

Council or the Owner. The second is where a tenant occupies a house that is dangerously deteriorated (e.g. if a commission has already issued an order that the house is unsafe and should be rehabilitated or razed).

Recommendation - With the move to a market economy and housing privatization, the traditional relationship of landlord (the State) and tenants (the citizens) will undergo a fundamental change. Some owners of privatized units will begin to rent their units. As private real estate markets develop, leasing activity will become commonplace. The Republic should develop a landlord-tenant law to establish the ground rules pursuant to which this relationship should operate. Such a law would be important to protect both the tenants' and landlords' interests. Included should be provisions that address rents, nonpayment of rents, other defaults, delivery of basic services, eviction procedures, additional remedies and other relevant issues. A USAID/ICMA consultant could be extremely helpful in developing such a law.

XV. PRIORITIZED AGENDA

Armenia has made considerable progress in its efforts to move towards a market economy. Those involved in the Government take great pride in the fact that Armenia was the first of the former Soviet Republics to initiate privatization efforts. They clearly intend to continue in this direction. Further USAID/ICMA activities should strive to build on current initiatives and past accomplishments.

With respect to the legal and institutional framework within which progress towards creating a privatized real estate economy must be accomplished, USAID/ICMA should consider providing additional assistance in the following areas. They are described in order of priority:

1. Expand on and rationalize existing system of land use and zoning laws.

   The use of land in Armenia, and its development, especially in the urbanized areas, would benefit significantly from rethinking the relationship between government and individual property owners. What uses exist "as of right" as opposed to those that are permitted at the government's discretion must be better defined to serve as the basis of a free market system. Zoning, land-use controls, special permitting procedures and other traditional American planning tools can be created with the goal of channeling permitted uses, rather than restricting land development outright. Relationships between the several levels

of government should also be examined with the goal of creating an efficient and effective system of land-use regulation and controls.

(See pages 24-26 for in-depth discussion.)

2. Establish a system for accurately identifying/defining land parcels, reporting land and housing transfers and recording property interests.

A system that clearly identifies individual parcels, including those owned by state or local governments, must be created to facilitate the easy sale and transfer of title. A comprehensive land inventory must be undertaken as a first step in developing such a process. Attention should also be paid to not only accurately reporting ownership interests, but also to providing the flexibility necessary to allow for public access to, and use of, information. A USAID/ICMA consultant could be extremely helpful in developing such a recording/reporting system.

(See pages 22 for in-depth discussion.)

3. Lay foundation for establishing a mortgage finance system.

Without the ability to borrow money, housing construction in Armenia will remain in its current dormant state and efforts to create a market-driven real estate market will remain merely a dream. There is a tremendous need to attract funds to the real estate sector. Establishment of a healthy mortgage finance system will be a critical element in this effort. Property rights must first be clearly established together with procedures for collateralizing and securitizing debt obligations. Procedures for securing and enforcing property interests and transferring property rights and obligations must be clearly established before lenders will be willing to invest capital in a developing market such as that in the early stages of formation in Armenia. A USAID/ICMA consultant should focus on establishing a coordinated set of policies that can foster the development of a mortgage market.

(See pages 22-24 for in-depth discussion.)

4. Establish laws that permit system of foreign ownership of land in limited circumstances.

Armenia will need to attract foreign investment if it is to establish a healthy economy and enter world markets. Foreign lenders will be unable to securitize loans without the ability foreclose on real property it accepts as collateral. A system must therefore be established that permits foreign lenders to take title to Armenian real property in limited circumstances such as loan defaults. Restrictions such as requiring that resales after foreclosure be made to Armenian nationals could be imposed to protect collateral.

(See pages 12-13 for in-depth discussion.)

5. Establish a system of determining the values of land and improvements, assessing and recording those values, and levying property and transfer taxes.

Armenia would benefit greatly from developing systems to accurately determine the value of land and improvements, record those values for public use, and equitably

levy property and transfer taxes based on those values. With tremendous need to generate revenues, and little experience in exercising taxing authority, the potential exists for imposing taxes in a manner that discourages economic growth and expansion. Establishment of a rational system of taxing property ownership and transfers can also be an important tool in helping to identify sales and rental prices. A USAID/ICMA consultant could provide valuable assistance in establishing a rational system of taxation. Such an effort should also focus on creating a system for accurately reporting and recording property values and making such data available for public use.

(See pages 3-4 and 19-21 for in-depth discussion.)

6. Rationalize and establish priorities for various additional proposed taxes.

No fewer than six proposed tax laws were under consideration by the Supreme Council during Mr. Josephs' mission. Little, if any consideration was given to the aggregate impact such taxes would have on individuals or the economy as a whole. Issues of fairness and accurate reporting and enforcement were considered only in a cursory manner. A consultant should focus attention on

attempting to examine proposed policies and develop a coordinated approach to the exercise of taxing authority.

(See pages 21 for in-depth discussion.)

7. Define and clarify the distinctions among and rights associated with different forms of property interests.

An effort should be made to define and differentiate among legal and equitable property interests in a comprehensive manner. Distinctions should be drawn among various forms of property ownership and leasehold interests. The manner in which title may be held, what rights and obligations may be transferred and in what manner may people hold title to property should also be examined. Limitations on the exercise of property rights and relationships that should be established between parties should be described in detail.

(See pages 7-12 and 15-17 for in-depth discussion.)

8. Develop model landlord-tenant law.

As Armenia moves to a market economy and completes the process of housing privatization, the former relationship between the landlord, which in almost all circumstances was the State, and tenants (the citizens) will be fundamentally changed. As private real estate markets develop, leasing activity will certainly increase. A landlord-tenant law should be drafted that establishes the ground rules pursuant to which this relationship will operate. It should include provisions that address rents, non-payment of rents, other defaults, eviction procedures, additional remedies, and other relevant issues.

(See pages 29-30 for in-depth discussion.)

9. Prepare law on property condemnation/takings.

There is no clearly developed law of eminent domain describing the purposes for which takings will be permitted, or the procedures by which condemnations must

be carried out. A consultant could be helpful in preparing a draft law on condemnation and provide guidance on the circumstances for which takings will be justified. The issue of appropriate compensation should also be explored. Alternative actions could also be examined, especially with respect to the discovery of mineral deposits or architectural artifacts that may be discovered on privatized lands.

(See pages 26-27 for in-depth discussion.)

10. Develop lien laws.

The imposition of liens can prove extremely useful in enforcing land use regulations and development laws. Liens are not widely used in Armenia at this time and are often imposed as a function of the criminal code. A USAID/ICMA consultant could assist in revamping the current system of liens imposition and enforcement, with the objective of tying their use to land use and management priorities.

(See pages 17 for in-depth discussion.)

11. Develop system of land leasing.

In the event Armenia elects to adopt a wide-scale system of land leasing, a consultant should assist in developing a methodology to set such a program into effect. This would include consideration of such factors as assuring current tenants their occupancy rights will not be terminated and addressing problems common to such ownership forms. It would also involve the development of form leases and training programs for the implementation and enforcement of such a wide-scale initiative.

(See pages 9-12 for in-depth discussion.)